

# State of South Dakota

## EIGHTIETH LEGISLATIVE ASSEMBLY, 2005

916L0120

SENATE BILL NO. \_\_\_\_\_

Introduced by: \_\_\_\_\_

1 FOR AN ACT ENTITLED, An Act to MINOR-DEFENSES.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 22-5-1 be amended to read as follows:

4 22-5-1. A No person may ~~not~~ be convicted of a crime based upon conduct in which ~~he~~ that  
5 person engaged because of the use or threatened use of unlawful force upon ~~him~~ himself,  
6 herself, or ~~upon~~ another person, which force or threatened use ~~thereof~~ of force a reasonable  
7 person in ~~his~~ that situation would have been lawfully unable to resist.

8 Section 2. That § 22-5-5 be amended to read as follows:

9 22-5-5. No act committed by a person while in a state of voluntary intoxication ~~shall~~ may  
10 be deemed less criminal by reason of ~~his having been in~~ such condition. But ~~whenever~~ if the  
11 actual existence of any particular purpose, motive, or intent is a necessary element to constitute  
12 any particular species or degree of crime, the jury may take into consideration the fact that the  
13 accused was intoxicated at the time in determining the purpose, motive, or intent with which  
14 ~~he~~ the accused committed the act.

15 Section 3. That § 22-5-7 be repealed.

16 — ~~22-5-7. A morbid propensity to commit prohibited acts existing in the mind of a person who~~



1 is not shown to have been incapable of knowing the wrongfulness of such acts forms no defense  
2 to a prosecution therefor.

3 Section 4. That § 22-5-9 be amended to read as follows:

4 22-5-9. Any person may lawfully resist the commission of any public offense as follows:

5 (1) ~~Any~~ Any person, about to be injured, may make sufficient resistance to prevent an  
6 offense against his or her person or ~~his family~~ or any family member thereof, or to  
7 prevent an illegal attempt by force to take or injure property in his or her lawful  
8 possession; and

9 (2) ~~Any~~ Any person may make sufficient resistance in aid or defense of a person, about to  
10 be injured, to prevent such offense.

11 Section 5. That § 22-5-10 be amended to read as follows:

12 22-5-10. Insanity is an affirmative defense to a prosecution for any criminal offense. Mental  
13 disease or defect does not otherwise constitute a defense. The defendant has the burden of  
14 proving the defense of insanity by clear and convincing evidence.